

BILLY NUGEN)	
Claimant)	
VS.)	
)	Docket No. 1,012,690
U.S.D. 357)	
Respondent)	
AND)	
)	
EMPLOYERS MUTUAL CASUALTY COMPANY)	
Insurance Carrier)	

The respondent school district employed claimant as a janitor. But in approximately March 2003, claimant transferred from his janitorial position to a maintenance position. In the maintenance position claimant performed strenuous and sometimes heavy physical labor. Claimant now believes the work that he performed as a maintenance worker further injured his low back, which had been fused in the early 1980s. Following that fusion, claimant occasionally experienced low back pain, which, generally, would resolve with rest.

According to the medical records introduced at the preliminary hearing, claimant, however, did see his personal doctor in March 2000 and October 2002 for back complaints.

After transferring to the maintenance department, claimant experienced more problems with his back. In April 2003, claimant sought medical treatment from his personal physician after moving benches. Claimant saw his doctor again in May 2003.

According to claimant, in approximately June 2003 he and a coworker began removing and replacing tile in a cafeteria floor. While performing that work, which required claimant to work on his hands and knees, claimant experienced worsening low back pain. The record establishes that claimant sought medical treatment from his personal physician in June, August and September 2003.

Approximately halfway through tiling the cafeteria floor, which he estimated was over 8,800 square feet, claimant began wearing a back brace at work. In approximately July and August 2003, claimant began missing work due to his low back symptoms. As claimant continued to work, his back again worsened. By September 2003, claimant was experiencing extreme back pain, which prevented him from working full days.

In early September 2003, claimant wrote a letter to respondent's superintendent of schools in which claimant stated he had hurt his back installing new tile in the cafeteria. Claimant's letter stated:

This letter is to inform you of the current circumstances concerning my job. While installing the new tile in the cafeteria I hurt my back. This injury was further aggravated by doing the plastering in the gym, heavy lifting, bending, and twisting at work. I have seen a doctor about it, he put me on a 30 lb. [w]eight limit. I did turn in the doctor's note about this. I was told that a weight limit was not acceptable if I wanted to continue working. I have been trying to continue working, disregarding my doctor's advice because I do need the job. Then on Tuesday Sept. 2, 2003 the injury was aggravated again while removing tree limbs. Prior to being put in the maintenance job I had no problem completing my job duties and I had a good attendance record. Since the injury I have been forced to use up all my sick leave, taking off days when the pain was to[o] severe to work. . . .¹

In response to the above letter, respondent returned claimant to a janitorial position.

At the October 7, 2003 preliminary hearing, claimant presented a note from his personal doctor, J. M. Baker, D.O., in which the doctor stated claimant aggravated his back while working for respondent.

¹ P.H. Trans., Cl. Ex. 1.

This claim illustrates the difficulties encountered by an injured worker and his or her employer when that worker has a preexisting injury or condition. In this instance, claimant did not initially know if the low back symptoms that he was experiencing were the sequelae of his earlier low back fusion or whether he was sustaining additional injury due to the work that he was performing for respondent. Likewise, respondent was not initially aware that claimant's increased low back complaints were caused by additional injury to his low back from his maintenance duties.

The Board finds no reason to disturb the Judge's finding that it is more probably true than not that claimant further injured his back by performing his maintenance duties for respondent. Additionally, the Board also adopts the Judge's finding that claimant provided respondent with timely notice of the accidental injury. Accordingly, the preliminary hearing Order should be affirmed.

WHEREFORE, the Board affirms the October 13, 2003 Order entered by Judge Barnes.

IT IS SO ORDERED.

Dated this ____ day of December 2003.

BOARD MEMBER

c: Michael L. Snider, Attorney for Claimant
James M. McVay, Attorney for Respondent and its Insurance Carrier
Nelsonna Potts Barnes, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director